

ACT 217

H.B. NO. 2484-84

A Bill for an Act Regarding Chapter 421C, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to restate and amend, without substantive change, Chapter 421C, Hawaii Revised Statutes, relating to Consumer Cooperative Associations.

SECTION 2. Section 421C-1, Hawaii Revised Statutes, is amended to read as follows:

“[[]§421C-1[]] **Definitions.** Except where the context requires otherwise, wherever used in this chapter:

- (1) “Articles” means, for stock associations, the articles of incorporation of [an] a stock association[.], or, for nonstock associations, the charter of incorporation of a nonstock association.
- (2) “Association” means a [group enterprise incorporated under this chapter.] consumer cooperative association.
- (3) “Consumer cooperative association” means a group enterprise, organized on a cooperative basis and incorporated under this chapter such that:
 - (A) Each member has one vote and only one vote, except as may be altered in the articles or bylaws of a secondary cooperative by provision for voting by member organizations;

- (B) The maximum rate at which any return is paid on share or membership capital is limited; and
 - (C) The allocation or distribution of net savings after making provision for such separate funds as may be required or specially permitted by statute, articles, or bylaws, is made to member patrons or to all patrons, in proportion to their patronage; or is allocated in a manner which benefits the general welfare of all of the members of the association.
- [(3)] (4) “Directors” means the board of directors of an association.
- [(4)] (5) “Interest-dividends” means the return on share, membership fee, or membership capital of the association which is limited in accordance with section 421C-19.
- [(5)] (6) “Member” means a member of either a stock or a nonstock association in accordance with section 421C-3.
- [(6)] (7) “Net savings” means the total income of an association minus the costs of operation.
- [(7)] (8) “Patronage refund” means the amount returned to the patrons in proportion to their patronage in accordance with section 421C-25.
- [(8)] (9) “Share or membership capital” refers to the capital paid into an association by a member in accordance with section 421C-3.
- [(9)] (10) “Surplus funds” means funds of an association which may be utilized for capital improvements, emergencies, or other expenditures of the association upon the authorization of the directors as specified in section 421C-25 or as otherwise specified in this chapter.”

SECTION 3. Section 421C-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except where otherwise provided, statutes and fees which apply to domestic profit corporations shall apply to stock associations, and statutes and fees which apply to domestic nonprofit corporations shall apply to nonstock associations.”

SECTION 4. Chapter 421C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§421C- Articles. (a) Articles shall be signed and acknowledged by each of the incorporators, if natural persons, and by the president and secretary of associations, before any officer authorized to take acknowledgments, and shall contain the following particulars:

- (1) The name of the association which shall contain the term “cooperative” or some abbreviation thereof notwithstanding section 421-5.

- (2) The street address and zip code of its principal office, which shall be in the State.
- (3) The purposes and powers of the association.
- (4) The duration of the association.
- (5) The number, names, titles and residence addresses of the initial officers and directors, or similar officers.
- (6) The names and post office addresses of the incorporators, and if organized with stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (7) If organized with stock, the total authorized number of par value shares and the par value of each share, and if the privilege of subsequent extension of the authorized stock is asked for, the limit of the extension; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the interest-dividends to which each class shall be entitled;
- (8) If organized without stock, whether the property rights and interest of each member are equal or unequal, if unequal, the rule by which the rights and interest shall be determined.

(b) The articles may also contain any other provisions, consistent with law for regulating the association’s business or the conduct of its affairs.”

SECTION 5. Section 421C-12, Hawaii Revised Statutes, is amended to read as follows:

“[[§421C-12[]] [Articles;] Bylaws; contents. The [articles] bylaws shall contain:

- [(1) The name of the association which shall contain the term “cooperative” or some abbreviation thereof notwithstanding section 421-5.
- [(2) (1) The maximum amount or percentage of capital which may be owned or controlled by one member.
- [(3) (2) A provision that in all decisions to amend the articles or bylaws, as the case may be, the members shall be informed of [such decision] those decisions at least thirty days in advance through a mailing or a prominent notice at all association locations.
- [(4) (3) The method and terms of admission to membership and the disposal of members’ interests on termination of membership for any reason.
- [(5) (4) A provision that a majority of directors, or five per cent of the, or two hundred fifty, members, whichever is less, may submit a petition in writing and demand a special membership meeting,

which shall be called by the secretary within thirty days of [such] that demand.

- [(6)] (5) A provision that notice for all meetings shall be made through posting prominent signs at all association locations or by mailing to the last known address of each member or director. Notices for special meetings shall specify the purpose of the meeting.
- [(7)] (6) A provision that associations shall not discriminate on their acceptance of members on a basis of race, gender, religion, income, marital status, or nationality.
- [(8)] (7) A provision that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least five per cent of the, or two hundred fifty, members, whichever is less, or by vote of at least a majority of the directors; provided that rights of third parties which have vested between the time of action by the directors and approval or disapproval by the members shall not be impaired.”

SECTION 6. Section 421C-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [For the purposes of this section, “groups] Being “organized on a cooperative basis” means being organized such that:

- (1) Each member has one vote and only one vote, except as may be altered in the articles or bylaws of a secondary cooperative by provision for voting by member organizations;
- (2) The maximum rate at which any return is paid on share or membership capital is limited; and
- (3) The allocation or distribution of net savings after making provision for such separate funds as may be required or specially permitted by statute, articles, or bylaws, is made to member patrons or to all patrons, in proportion to their patronage; or is allocated in a manner which benefits the general welfare of all of the members of the association.”

SECTION 7. Section 421C-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If a member desires to withdraw from the association or dispose of any or all of the member’s holdings therein, the directors shall have the power to purchase [such] those holdings by paying the member out of surplus funds the par value or book value, whichever is less, of any or all of the holdings offered. The directors shall then reissue or cancel the holdings. [A vote of the majority of

the members voting at a regular or special meeting may order the directors to exercise this power to purchase.]”

SECTION 8. Section 421C-28, Hawaii Revised Statutes, is amended to read as follows:

“[]§421C-28[]] **Books; [auditing.] review.** (a) Subject to subsection (b), every association shall keep a set of books of the association’s business operations, which shall be [audited] reviewed at the end of each fiscal year by a certified public accountant who shall not be an officer, director, or employee of the association.

(b) Where the annual gross business income of an association amounts to less than \$1,000,000 (which amount shall be adjusted for changes in the Consumer Price Index since the effective date of this chapter), the [audit] review need not be done by a certified public accountant but may be performed by [an auditing] a review committee of two individuals who shall not be employees, plus the association’s treasurer.

(c) A written report of the [audit,] review, which may include a statement of the amount of business transacted with members and the amount transacted with nonmembers, and which shall include a balance sheet of the association’s income and expenses, shall be submitted to the annual meeting of the association.”

SECTION 9. Section 421C-37, Hawaii Revised Statutes, is amended to read as follows:

“§421C-37 **Existing cooperatives.** Any domestic corporation or group operating on a cooperative basis as defined in section 421C-1 [this chapter currently in the State] may elect by a vote of two-thirds of the members present and voting to secure the benefits of and be bound by [these provisions,] this chapter, and shall thereupon file such papers or amend such of its articles and bylaws as are not in conformity with these provisions. A certified copy of any amended articles shall be filed with the director of commerce and consumer affairs and a fee of \$25 shall be paid.”

SECTION 10. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 11. This Act shall take effect upon its approval.

(Approved May 30, 1984.)

Note

1. Edited pursuant to HRS §23G-16.5.